D.B.CIVIL SPECIAL APPEAL (WRIT) NO.2/2007
(State of Raj. & Ors. Vs. Shri Rameshwar Singh Bhati)

DATE OF ORDER:30.05.2007

HON'BLE MR.JUSTICE RAJESH BALIA
HON'BLE MR.JUSTICE BHANWAROO KHAN

Mr.L.R.Upadhyaya, Dy. Government Advocate
Mr.Kuldeep Mathur, for the respondent

BY THE COURT(PER HON'BLE MR.BALIA J.)

Heard learned counsel for the parties.

This litigation relates to emoluments of the respondent petitioner from 30th September, 2004 when he was ordered to be transferred to Panchayat Samiti, Sojat from Panchayat Samiti, Marwar Junction, where he was functioning as J.En. and till the date order was actually carried out on 13.7.2005.

The facts of the case are that the petitioner had challenged his order of transfer dated 30.9.2004 by way of S.B.Civil Writ Petition No.4649/2004, that writ petition was disposed of by directing the petitioner to make representation before the competent authority. The competent authority was directed to decide the representation within reasonable time. In pursuance thereof the respondent petitioner filed a representation before the competent authority. The said

representation was decided on 2.4.2005 by which it was ordered that the order dated 30th September, 2004 is kept as it is and the petitioner was directed to report on duty at Panchayat Samiti, Sojat.

It was further coupled with direction that since the matter was pending before the Panchayati Raj Department for consideration, the salary and allowances shall be paid by Panchayat Samiti, Marwar Junction and a note in this regard was endorsed to B.D.O., Panchayat Samiti, Marwar Junction. It was directed that during the period the matter was pending consideration before the Department in view of the directions of the High Court by considering him to be present, his salary and emoluments be paid by Panchayat Samiti, Marwar Junction and he should be immediately relieved for joining at Panchayat Samiti, Sojat.

In pursuance of aforesaid direction the respondent petitioner was relieved and he joined at Sojat. After joining at Sojat, petitioner was not paid emoluments for aforesaid period. This led to filing of S.B.Civil Writ Petition No.119/2006 claiming emoluments for aforesaid period. The petitioner was relieved from Panchayat Samiti, Marwar Junction and joined at Panchayat Samiti, Sojat on 13.7.2005. The learned Single Judge has allowed the writ petition vide judgment under appeal directing the present appellants to make payment of salary to the

petitioner commencing from the period 30th September, 2004 to 13.7.2005. Hence this appeal.

We are opinion that in view of the direction by the Panchayati Raj Department indicating that the petitioner should be considered to be present at Panchayat Samiti, Marwar Junction, from where he was directed to be relieved and to join at Panchayat Samiti, Sojat the place of his posting and wherefrom in fact he had joined at Sojat only on 13.7.2005. No exception can be taken to the order passed by the learned Single Judge and it is not open for the appellants to take different stand. Primarily it was an issue between the two Panchayat Samities – Marwar and Sojat – who to pay the salary for period in question. On admitted facts, the petitioner had joined Sojat only on 13.7.2005. Hence prior to that date, ordinarily Marwar Panchayat Samiti only will be liable to pay his emoluments. The Director, Local Bodies has resolved this issue rightly.

The appeal fails and stands dismissed. The ad interim order is vacated.

(BHANWAROO KHAN) J. **(RAJESH BALIA) J.**

BKS/-